IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.577/2006

Reserved on.19.11.2007

Decided on.21.11.2007

Roop Chand. **…Petitioner.**

Versus

H.P.S.E.B & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes.*

For the petitioner : **Mr. Rahul Mahajan, Advocate.**

For the respondents **Mr. Vijay Thakur, Advocate vice Mr. Shrawan Dogra, Advocate for respondents No.1 and 2.**

M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate General for respondent No.4.

Rajiv Sharma, J.

A challenge has been laid to the award passed by the learned Labour Court-cum-Industrial Tribunal, Dharamshala dated 23.3.2006 in reference No.45 of 2001.

The brief facts necessary for the adjudication of this petition are that the petitioner (hereinafter referred to as the workman for convenience sake) has raised demand notice on 24th July, 2000. The same was replied by the employer on 1st November, 2001. The State Government after the receipt of the failure report had made the following reference to the Labour Court:

> **"Whether the termination of the services of Shri Roop Chand by the Executive Engineer, Jogindernagar Division, HPSEB Jogindernagar, District Mandi, H.P.**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?yes.

without notice and without payment of due compensation is justified and legal? If not, to what service benefits and damages the said labourer is entitled?

In sequel to the reference made by the State Government on 17.4.2001, the workman filed statement of claim before the Labour Court primarily contending therein that his disengagement on 5.10.1997 has been effected without following clause 14 (2) of the Certified Standing Order framed by the respondent-Board under the Industrial Employment (Standing Order), 1946 as well as the mandatory provisions of the Industrial Disputes Act, 1947, more particularly, Section 25 (G) and (H). The employer had filed the detailed reply to the statement of claim and had raised preliminary objection with regard to delay and laches. The Labour Court on the basis of the evidence led by the parties had dismissed the claim of the petitioner on the ground of delay and laches on 22.3.2006.

Mr. Rahul Mahajan, Advocate had strenuously argued that once the reference had been made by the State Government to the Labour Court on 17th April, 2001, it was incumbent upon the Labour Court to adjudicate upon the reference on its merits instead of rejecting the same on the ground of delay and laches.

Mr. Vijay Thakur, Advocate appearing vice counsel for the respondent-Board had supported the award dated 22.3.2006.

I have heard the learned counsel for the parties and perused the record.

It appears from the pleadings of the parties that the employer i.e. HPSEB had approached this Court by way of CWP No. 1040 of 2001 specifically challenging the reference made by the State Government on 17.4.2001. The writ petition was disposed of by this Court on 23rd April,

2007 on the basis of the judgment rendered by this Court in CWP No. 219/2002. The pendency of the writ petition bearing No. 1040/2001 was not brought to the notice of the Labour Court, Dharamshala which led to passing of the award dated 23.3.2006. Though this court while disposing of the writ petition No. 1040/2001 had permitted the employer to raise all the objections, including the objection of delay and laches but that has lost its relevance for the simple reason that the judgment was rendered on 23rd April, 2007 in CWP No. 1040/2001 and the award was passed on 23.3.2006 by the Labour Court.

The petitioner had been engaged in two spells. Firstly, he was engaged as daily wage Beldar with effect from 25.2.1995 to 24.7.1995 and thereafter with effect from 5.9.1997 to 5.10.1997. Mr. Rahul Mahajan, Advocate has submitted that neither any notice was issued nor any compensation was paid to the workman as admissible under law. He also contended that persons junior to the workman were retained at the time of his dis-engagement on 5.10.1997 which resulted in violation of section 25 (G) of the Industrial Disputes Act, 1947. The workman had also made a representation to the employer on 2.3.1998 vide Annexure P-1. The demand notice was raised by the workman on 24.7.2000 and the reference has been made by the State Government on 17.4.2001. In view of these facts it is evident that there was no inordinate delay in raising the dispute by the workman. He was disengaged on 5.10.1997. He made the representation on 2.3.1998 and raised the demand on 24.7.2000.

Their Lordships of the Hon'ble Supreme Court in ***Karan Singh versus M/s Executive Engineer Haryana State Marketing Board***, JT 2007 (12) SC 141 had the occasion to go into the question of delay in seeking reference to the Labour Court. The facts which had been considered by the Hon'ble Supreme Court in Karan Singh case are that

the workman had worked from 1993 to October, 1994. The claim was filed in the year 2000. The reference was made by the State Government on 8.2.2001. The Labour Court took the view that the claim was highly belated and the workman should have come up with a demand notice within a reasonable time. The workman preferred a writ petition against the decision of the Labour Court. The writ petition was dismissed by the High Court. The following question had arisen before the Hon'ble Supreme Court for determination which reads:

> **"Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/ dispute."**

Their Lordships of the Hon'ble Supreme Court after formulating the point for determination have held as under:

> **"In the case of Management of Express Newspapers (Private) Ltd. v. The Workers and Ors. reported in (AIR 1963 SC 569) it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4).**
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> **In the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371) it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier, the Income Tax Officer must have reason to believe escapement of income. This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a**

reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference n the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947.

In Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. (2001) 6 SCC 222), it has been held, vide para 15, as follows:

> **"There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter ltogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process each its legal culmination."**

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

> **"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."**

In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. pursuant to the judgment in Daily Rated Casual Employees Under P&T department v. Union of India

(supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh (2006 (1) Supreme 282) and Chief Engineer, Ranjit Sagar Dam & Anr. v. Sham Lal (2006(9) SCC 124).

In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay.

In view of the law laid down by the Hon'ble Supreme Court it was incumbent upon the Labour Court to decide the matter on its merits instead of dismissing the same on the ground of delay and laches. The Labour Court at the most could consider the question of delay and laches while granting the relief.

The Hon'ble Supreme Court in ***State of Punjab versus Anil Kumar***, JT 2007 (7) SC 559 has upheld the reinstatement of the workman though he had raised the dispute after 13 years. Their Lordships have held as under:

"In support of the appeal, learned counsel for the appellant submitted that the civil suit filed, was thoroughly misconceived. In view of Section 2(oo)(bb) of the Act on expiry of the fixed period for which engagement was done,

there was no scope for any direction for reinstatement. The demand for reference under the Act was made after 13 years.

Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.

In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified. In the aforesaid background, the direction for payment of back wages stands set aside while the direction for reinstatement is maintained.

Consequently, the award dated 23.3.2006 is quashed and set aside. The matter is remanded back to the Labour Court–cum-Industrial Tribunal, Dharamshala to decide the same within a period of four months from today. To avoid delay, the parties are directed to appear before the Labour Court –cum-Industrial Tribunal, Dharamshala on 12.12.2007.

There shall be no order as to costs.

(Rajiv Sharma), Judge

November 21, 2007
Awasthi